

Message Text

PAGE 01 STATE 081468
ORIGIN OES-06

INFO OCT-01 NEA-10 ISO-00 ERDA-07 L-03 NRC-07 /034 R

DRAFTED BY OES/NET/IM: D H COOPER:BJB
APPROVED BY OES/NET: L V NOSENZO
ERDA: G HELFRICH
ERDA/GC: J GLASGOW
NEA/INS: D KUX (SUBS)
L/OES: C SIEGAL
L/T: A ROVINE

-----122303Z 044165 /66

P 121636Z APR 77
FM SECSTATE WASHDC
TO AMCONSUL BOMBAY PRIORITY
INFO AMEMBASSY NEW DELHI PRIORITY

UNCLAS STATE 081468

E.O. 11652: N/A

TAGS: TECH, ENRG, PARM, IN

SUBJECT: TARAPUR FUEL STORAGE

REFERENCE: BOMBAY 816

1. FOLLOWING IS VERBATIM TEXT OF PROPOSED AGREEMENT
BETWEEN U.S. ERDA AND INDIAN AEC TO PERFORM FEASIBILITY
STUDY OF THE POTENTIAL FOR INCREASING THE SPENT FUEL
STORAGE CAPACITY OF TAPS, AND A RELATED AGREEMENT BE-
TWEEN G.E. AND INDIAN AEC WHICH IS TO BE APPENDED TO THE
ERDA/GOI AGREEMENT:

BEGIN TEXT OF AGREEMENT:

TITLE: AGREEMENT BETWEEN THE UNITED STATES ENERGY RE-
UNCLASSIFIED

PAGE 02 STATE 081468

SEARCH AND DEVELOPMENT ADMINISTRATION AND THE INDIAN
ATOMIC ENERGY COMMISSION.

WHEREAS THE INDIAN ATOMIC ENERGY COMMISSION (IAEC)
DESIRES THAT THE U.S. ENERGY RESEARCH AND DEVELOPMENT
ADMINISTRATION (ERDA) PERFORM A FEASIBILITY STUDY OF THE
POTENTIAL FOR INCREASING THE SPENT FUEL CAPACITY OF THE
TARAPUR ATOMIC POWER STATION; AND

WHEREAS ERDA IS WILLING TO PERFORM SUCH A STUDY FOR THE

IAEC; AND

WHEREAS ERDA HAS AUTHORITY TO ENGAGE IN SUCH ACTIVITIES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED AND THE ENERGY REORGANIZATION ACT OF 1974; AND

WHEREAS, ERDA DESIRES TO RECEIVE FROM IAEC REPORTS RELATING TO APPLICATION AND USE OF THE INFORMATION PROVIDED BY ERDA AND ITS CONTRACTOR UNDER THIS AGREEMENT; AND

WHEREAS THE UNITED STATES AND THE GOVERNMENT OF INDIA HAVE BEEN COOPERATING IN THE CIVIL USES OF ATOMIC ENERGY PURSUANT TO AN AGREEMENT FOR COOPERATION WHICH ENTERED INTO FORCE OCTOBER 25, 1963;

NOW, THEREFORE, ERDA AND IAEC HEREBY AGREE AS FOLLOWS:

1. ERDA WILL CONDUCT A STUDY CONCERNING THE FEASIBILITY OF THE POTENTIAL FOR INCREASING THE SPENT FUEL STORAGE CAPACITY OF THE TARAPUR ATOMIC POWER STATION. UPON COMPLETION OF THE ABOVE MENTIONED STUDY (HEREAFTER REFERRED TO AS THE STUDY) ERDA WILL PROVIDE IAEC WITH A REPORT OF ITS FINDINGS AND CONCLUSIONS. THE REPORT WILL BE COMPLETED AS SOON AS POSSIBLE

UNCLASSIFIED

PAGE 03 STATE 081468

CONSISTENT WITH THE NEED FOR ACCURACY AND COMPLETENESS AND CONSISTENT WITH THE PROVISIONS OF ANNEX A HERETO.

2. THE IAEC AGREES TO AFFORD FULL ACCESS CONSISTENT WITH THE NEEDS OF THIS AGREEMENT BY AUTHORIZED ERDA REPRESENTATIVES TO TARAPUR ATOMIC POWER STATION. IAEC ALSO AGREES TO PROVIDE ERDA AND ITS AUTHORIZED REPRESENTATIVES WITH OPERATING DATA, TECHNICAL SPECIFICATIONS, AND OTHER INFORMATION NECESSARY AND PERTINENT TO THE PERFORMANCE OF THE STUDY. FURTHERMORE, IAEC AGREES TO SUPPLY ERDA AND ITS REPRESENTATIVES WITH SEISMIC DATA AND RELATED INFORMATION NECESSARY AND PERTINENT TO THE PERFORMANCE OF THE STUDY.

3. ALTHOUGH ERDA WILL EXERCISE EVERY REASONABLE EFFORT TO COMMENCE AND COMPLETE THE STUDY, IAEC AGREES THAT, IN THE EVENT ERDA IS UNABLE FOR ANY REASON TO COMMENCE OR COMPLETE THE STUDY, ERDA WILL INCUR NO LIABILITY WHATSOEVER AS A RESULT THEREOF.

4. ERDA WILL BEAR ALL COSTS OF THE STUDY EXCEPT

THAT THE IAEC WILL PROVIDE WITHOUT CHARGE TO ERDA SEISMIC INFORMATION AND OTHER NECESSARY AND PERTINENT DATA WHICH IS IN THE POSSESSION OF THE GOVERNMENT OF INDIA. MOREOVER, IAEC WILL MAKE AVAILABLE UPON REQUEST BY ERDA KNOWLEDGEABLE SCIENTIFIC AND TECHNICAL PERSONNEL TO ASSIST ERDA REPRESENTATIVES IN PERFORMING THE STUDY.

5. THE APPLICATION OR USE OF ANY INFORMATION

(INCLUDING DESIGN DRAWINGS AND SPECIFICATIONS)
UNCLASSIFIED

PAGE 04 STATE 081468

PROVIDED UNDER THIS AGREEMENT SHALL BE THE RESPONSIBILITY OF THE IAEC AND ERDA DOES NOT WARRANT THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION AND DOES NOT WARRANT THE SUITABILITY OF SUCH INFORMATION FOR ANY PARTICULAR USE OR APPLICATION.

6. IF THE IAEC MAKES USE OF THE INFORMATION SUPPLIED IN THE STUDY BY INSTALLING EQUIPMENT OR MODIFYING TARAPUR'S SPENT FUEL STORAGE FACILITIES, IT WILL PROVIDE ERDA WITH A FULL REPORT OF SUCH INSTALLATION AND WILL ALSO PROVIDE PERIODIC OPERATIONAL REPORTS CONTAINING TECHNICAL DATA RELATING TO THE EMPLOYMENT OF THE INFORMATION PROVIDED IN THE STUDY.

7. PATENTS

(A) WITH RESPECT TO ANY INVENTION OR DISCOVERY WHICH IS MADE OR CONCEIVED DURING THE PERIOD OF, AND IN THE COURSE OF OR UNDER THIS AGREEMENT, ERDA ON THE BEHALF OF THE UNITED STATES GOVERNMENT, AND IAEC HEREBY AGREE THAT:

(1) IF MADE OR CONCEIVED BY PERSONNEL OF ERDA OR ITS CONTRACTORS DURING THE COURSE OF THIS STUDY:

(I) THE UNITED STATES GOVERNMENT SHALL ACQUIRE ALL RIGHT, TITLE AND INTEREST IN AND TO ANY SUCH INVENTION OR DISCOVERY IN ITS OWN COUNTRY AND IN ALL THIRD COUNTRIES PROVIDED HOWEVER THAT THE IAEC SHALL BE GRANTED A NONEXCLUSIVE, IRREVOCABLE PAID-UP LICENSE, WITH THE RIGHT TO GRANT SUBLICENSES THEREUNDER; AND

(II) ERDA SHALL ACQUIRE ALL RIGHT, TITLE AND INTEREST
UNCLASSIFIED

PAGE 05 STATE 081468

IN AND TO ANY SUCH INVENTION OR DISCOVERY IN ITS OWN COUNTRY, PROVIDED HOWEVER THAT ERDA SHALL RECEIVE A NON-EXCLUSIVE, IRREVOCABLE, PAID-UP LICENSE, WITH THE RIGHT TO GRANT SUB-LICENSES THEREUNDER.

(2) IF MADE OR CONCEIVED BY PERSONNEL OF ERDA OR THE IAEC OR THEIR CONTRACTORS OTHER THAN IN ACCORDANCE WITH SUB-PARAGRAPH (1) ABOVE WHEN EMPLOYING INFORMATION WHICH HAS BEEN COMMUNICATED UNDER THIS AGREEMENT, THE CONTRACTING PARTY MAKING THE INVENTION OR DISCOVERY SHALL ACQUIRE ALL RIGHT, TITLE AND INTEREST IN AND TO ANY SUCH INVENTION OR DISCOVERY IN ALL COUNTRIES, PROVIDED HOWEVER THAT THE OTHER CONTRACTING PARTY SHALL BE GRANTED A NON-EXCLUSIVE IRREVOCABLE, PAID-UP LICENSE, WITH THE RIGHT TO GRANT SUBLICENSES THEREUNDER.

(9) NEITHER THE UNITED STATES NOR IAEC SHALL DISCRIMINATE AGAINST CITIZENS OF THE OTHER WITH RESPECT TO GRANTING ANY LICENSE OR SUBLICENSE UNDER ANY INVENTION PURSUANT TO SUBPARAGRAPHS (A)(1) AND (A)(2) ABOVE.

(C) THE UNITED STATES AND THE IAEC SHALL EACH ASSUME THE RESPONSIBILITY TO PAY AWARDS OR COMPENSATION REQUIRED TO BE PAID TO ITS EMPLOYEES ACCORDING TO THE LAWS OF ITS COUNTRY.

8. EXCHANGE OF INFORMATION

(A) NEITHER ERDA NOR IAEC NOR EXPERTS DESIGNATED BY THEM SHALL EXCHANGE PROPRIETARY INFORMATION UNLESS SUCH INFORMATION IS SPECIFICALLY IDENTIFIED AND ITS INTRODUCTION AGREED UPON BY ERDA AND IAEC. IN THE EVENT SUCH AN EXCHANGE DOES OCCUR, ERDA AND IAEC SHALL TAKE ALL NECESSARY STEPS TO PROTECT PROPRIETARY INFORMATION IN ACCORDANCE WITH PARAGRAPH B. BELOW AND IN ACCORDANCE WITH THE LAWS OF THEIR RESPECTIVE COUNTRIES AND WITH UNCLASSIFIED

PAGE 06 STATE 081468

TERNATIONAL LAW.

(3) IN GENERAL, INFORMATION EXCHANGED IN CONNECTION WITH THIS AGREEMENT MAY BE MADE AVAILABLE FOR PUBLIC DISSEMINATION AT THE DISCRETION OF ERDA AND IAEC. HOWEVER IT IS RECOGNIZED THAT CERTAIN INFORMATION MADE AVAILABLE MAY CONTAIN INDUSTRIAL PROPERTY OF A PROPRIETARY NATURE. SUCH PROPERTY, WHICH MAY INCLUDE TRADE SECRETS, INVENTIONS, PATENT INFORMATION AND "KNOW-HOW," AND WHICH WAS ACQUIRED BY EITHER ERDA OR IAEC PRIOR TO OR OUTSIDE THE COURSE OF ACTIVITIES CONDUCTED UNDER THIS AGREEMENT, SHALL BE DEFINED FOR THE PURPOSES OF THIS AGREEMENT AS

INFORMATION WHICH:

- (1) IS OF A TYPE CUSTOMARILY HELD IN CONFIDENCE BY COMMERCIAL FIRMS;
- (2) IS NOT GENERALLY KNOWN OR PUBLICLY AVAILABLE FROM OTHER SOURCES;
- (3) HAS NOT PREVIOUSLY BEEN MADE AVAILABLE TO OTHERS BY THE PARTY SUPPLYING IT EXCEPT UNDER AN AGREEMENT PROTECTING ITS CONFIDENTIALITY; AND
- (4) IS NOT ALREADY IN THE POSSESSION OF THE RECIPIENT PARTY OR ITS CONTRACTOR.

INDUSTRIAL PROPERTY OF A PROPRIETARY NATURE, AS DEFINED ABOVE, SHALL BE RESPECTED BY THE RECIPIENT PARTY, SHALL NOT BE USED FOR COMMERCIAL PURPOSES, AND SHALL NOT, EXCEPT AS MAY BE REQUIRED BY THE LAWS APPLICABLE TO ERDA AND IAEC, BE MADE PUBLIC WITHOUT THE CONSENT OF THE PARTY ORIGINATING SUCH INDUSTRIAL PROPERTY. INDUSTRIAL PROPERTY OF A PROPRIETARY NATURE WHICH IS EXCHANGED SHALL BE CLEARLY MARKED BY THE SENDING PARTY. DISSEMINATION OF SUCH INFORMATION WILL BE LIMITED TO:
UNCLASSIFIED

PAGE 07 STATE 081468

- (1) PERSONS WITHIN OR EMPLOYED BY THE RECIPIENT PARTY AND TO OTHER CONCERNED AGENCIES OF THE RECIPIENT PARTY'S GOVERNMENT; AND

- (2) PRIME OR SUBCONTRACTORS OF THE RECIPIENT PARTY'S GOVERNMENT FOR USE ONLY WITHIN THE FRAMEWORK OF ITS CONTRACTS RELATING TO THE SUBJECT MATTER OF THE INFORMATION SO DISSEMINATED.

ERDA AND IAEC SHALL EACH EXERCISE ITS BEST EFFORTS TO ENSURE THAT DISSEMINATION OF INDUSTRIAL PROPERTY OF A PROPRIETARY NATURE RECEIVED UNDER THIS AGREEMENT IS CONTROLLED AS PRESCRIBED HEREIN.

- (C) FOR THE PURPOSES OF THIS PROPRIETARY INFORMATION ARTICLE, ERDA SHALL BE DEEMED TO INCLUDE ITS CONTRACTORS AND IAEC SHALL BE DEEMED TO INCLUDE ITS CONTRACTORS.

9. GOVERNMENT OF INDIA AGREES TO INDEMNIFY AND HOLD HARMLESS ERDA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND PERSONS ACTING ON THEIR BEHALF AGAINST ANY AND ALL DAMAGES, LIABILITIES OR COSTS WHICH MAY ARISE FROM THE USE OR APPLICATION OF THE INFORMATION PROVIDED BY ERDA TO IAEC UNDER THIS AGREEMENT.

10. IAEC ACKNOWLEDGES THAT ERDA PLANS TO OBTAIN THE EX-

PERT ADVICE AND ASSISTANCE OF THE GENERAL ELECTRIC COMPANY IN CARRYING OUT THIS STUDY AND NOTES THAT GOI HAS EXECUTED AN AGREEMENT WITH GENERAL ELECTRIC COMPANY (ATTACHED HERETO AS ANNEX A) REGARDING GENERAL ELECTRIC'S PARTICIPATION.

11. NO MEMBER OF OR DELEGATE TO THE CONGRESS OF THE UNITED STATES OF AMERICA OR RESIDENT COMMISSIONER OF THE UNITED STATES OF AMERICA, SHALL BE ADMITTED TO ANY UNCLASSIFIED

PAGE 08 STATE 081468

SHARE OR PART OF THIS CONTRACT OR TO ANY BENEFIT THAT MAY ARISE THEREFROM; BUT THIS PROVISION SHALL NOT BE CONSTRUED TO EXTEND TO THIS CONTRACT IF MADE WITH A CORPORATION FOR ITS GENERAL BENEFIT.

12. THE GOVERNMENT OF INDIA WARRANTS THAT NO PERSON OR SELLING AGENCY HAS BEEN EMPLOYED OR RETAINED TO SOLICIT OR SECURE THIS CONTRACT UPON AN AGREEMENT OR UNDERSTANDING FOR A COMMISSION, PERCENTAGE, BROKERAGE, OR CONTINGENT FEE, EXCEPTING BONA FIDE EMPLOYEES OR BONA FIDE ESTABLISHED COMMERCIAL OR SELLING AGENCIES MAINTAINED BY THE GOVERNMENT OF INDIA FOR THE PURPOSE OF SECURING BUSINESS. FOR BREACH OR VIOLATION OF THIS WARRANTY, THE U.S. GOVERNMENT SHALL HAVE THE RIGHT TO ANNUL THIS CONTRACT WITHOUT LIABILITY OR IN ITS DISCRETION TO RECOVER THE FULL AMOUNT OF SUCH COMMISSION, PERCENTAGE, BROKERAGE, OR CONTINGENT FEE.

13. THIS CONTRACT SHALL BE CONSTRUED ACCORDING TO THE LAWS APPLICABLE IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR CONTRACTS IN THE UNITED STATES OF AMERICA TO WHICH THE GOVERNMENT OF THE UNITED STATES OF AMERICA IS A PARTY.

(DATE) TITLE ERDA
ON BEHALF OF THE UNITED
STATES OF AMERICA

(DATE) TITLE INDIAN ATOMIC "NERGY
COMMISSION ON BEHALF OF THE
GOVERNMENT OF INDIA

END TEXT OF ERDA/IAEC AGREEMENT.

BEGIN TEXT OF GOI/GE AGREEMENT:

UNCLASSIFIED

PAGE 09 STATE 081468

TITLE: AGREEMENT BETWEEN THE PRESIDENT OF INDIA AND

GENERAL ELECTRIC COMPANY

THIS AGREEMENT IS EFFECTIVE APRIL 1, 1977, AND IS BETWEEN THE PRESIDENT OF INDIA (HEREINAFTER REFERRED TO AS "GOVERNMENT," WHICH EXPRESSION SHALL INCLUDE THE PRESIDENT'S SUCCESSORS AND PERMITTED ASSIGNS) AS SOLE OWNER AND OPERATOR OF THE TARAPUR ATOMIC POWER STATION (HEREINAFTER REFERRED TO AS THE "STATION"), AND GENERAL ELECTRIC COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA (HEREINAFTER REFERRED TO AS "GE", WHICH EXPRESSION SHALL INCLUDE ITS SUCCESSORS AND PERMITTED ASSIGNS).

GE IS WILLING TO PERFORM A FEASIBILITY STUDY FOR INCREASING THE SPENT FUEL STORAGE CAPACITY OF THE STATION UNDER A SEPARATE AGREEMENT WITH THE UNITED STATES ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION (SUCH STUDY IS HEREINAFTER REFERRED TO AS THE "STUDY"). IN CONSIDERATION OF GE'S PERFORMANCE OF SUCH STUDY AND OF THE BENEFITS TO BE DERIVED BY GOVERNMENT THEREFROM AND THE MUTUAL COVENANTS HEREINAFTER SET FORTH, THE PARTIES, INTENDING TO BE LEGALLY BOUND, AGREE AS FOLLOWS:

ARTICLE I - PROTECTION AGAINST NUCLEAR RISKS

A. INDEMNITY

1. THE GOVERNMENT HEREBY AGREES TO INDEMNIFY GE AND GE'S SUPPLIERS AGAINST ANY LIABILITY AND AGAINST ANY RELATED EXPENSES ARISING OUT OF ANY NUCLEAR INCIDENT IN CONNECTION WITH THE STATION, OR ITS FUEL, OR ANY WORK UNDER THE STUDY, EXCEPT A NUCLEAR INCIDENT OCCURRING WITHIN THE UNITED STATES OF AMERICA. THE INDEMNITY SHALL NOT APPLY TO THE LIABILITY OF GE OR GE'S SUPPLIERS FOR DAMAGE

UNCLASSIFIED

PAGE 10 STATE 081468

TO THE EMPLOYEES OF GE OR GE'S SUPPLIERS WHO ARE NOT NATIONALS OF INDIA AND GE AND GE'S SUPPLIERS SHALL DISCHARGE ANY LIABILITY THEY MAY HAVE TO THEIR RESPECTIVE EMPLOYEES.

2. GOVERNMENT MAY, IN ITS DISCRETION, PROVIDE FOR INSURANCE AGAINST THE RISKS COVERED BY THE INDEMNITY OF SECTION A-1. THE COST OF SUCH INSURANCE SHALL BE BORNE BY THE GOVERNMENT. THE INDEMNITY PROVIDED IN SECTION A-1 SHALL APPLY TO THE EXTENT THAT RISKS COVERED BY THE INDEMNITY ARE NOT REIMBURSED BY SUCH INSURANCE.

3. GE AND GE'S SUPPLIERS SHALL, AS SOON AS PRACTICABLE, GIVE GOVERNMENT NOTICE OF ANY CLAIM, SUIT, OR ACTION IN

RESPECT OF ANY LIABILITY OR DAMAGE COVERED BY THE INDEMNITY OF SECTION A-1. GOVERNMENT SHALL PROMPTLY APPLY TO BE MADE A PARTY TO AND ASSUME THE DEFENSE OF ANY SUCH CLAIM, SUIT, OR ACTION, UNLESS THE AMOUNT INVOLVED IN SUCH CLAIM, SUIT, OR ACTION IS FULLY COVERED BY INSURANCE PROVIDED UNDER SECTION A-2. GE AND GE'S SUPPLIERS SHALL FURNISH ALL NECESSARY ASSISTANCE TO GOVERNMENT TO CONDUCT SUCH DEFENSE. ANY JUDGMENT, DECREE, OR AWARD OF ANY COURT OR ARBITRAL TRIBUNAL IN RESPECT OF ANY LIABILITY OR DAMAGE COVERED BY THE INDEMNITY OF SECTION A-1, AND ANY SETTLEMENT MADE WITH THE CONSENT OF GOVERNMENT, SHALL BE DIRECTLY AND COMPLETELY DISCHARGED BY GOVERNMENT. GOVERNMENT SHALL NOT, HOWEVER, BE OBLIGATED TO DISCHARGE ANY JUDGMENT OR DECREE IF SUCH JUDGMENT OR DECREE IS APPEALED FROM AND A STAY OF EXECUTION THEREOF IS GRANTED BY A COURT NOR SHALL GOVERNMENT BE OBLIGATED TO DISCHARGE ANY ARBITRAL AWARD WHILE IT IS CONTESTED IN A COURT OF LAW. IF GOVERNMENT IS NOT MADE A PARTY AS AFORESAID, GOVERNMENT MAY EITHER (A) REQUIRE GE OR GE'S SUPPLIERS, AS THE CASE MAY BE, AT GOVERNMENT'S COST, TO DEFEND SUCH SUIT OR PROCEEDING AND TO APPEAL FROM ANY UNCLASSIFIED

PAGE 11 STATE 081468

SUCH JUDGMENT OR DECREE OR TO TAKE LEGAL ACTION TO SET ASIDE ANY SUCH AWARD AS THE CASE MAY BE, OR (B) REQUIRE GE OR GE'S SUPPLIERS, AS THE CASE MAY BE, TO FURNISH GOVERNMENT WITH THE NECESSARY POWERS OF ATTORNEY TO ENABLE GOVERNMENT TO SO APPEAL OR TAKE ACTION ON BEHALF OF GE OR GE'S SUPPLIERS. GOVERNMENT SHALL NOT BE OBLIGATED TO DISCHARGE ANY JUDGMENT, DECREE OR AWARD AGAINST A PARTY WHICH HAS FAILED TO FURNISH GOVERNMENT WITH THE NECESSARY POWER OF ATTORNEY AS SPECIFIED HEREIN WITHIN FIFTEEN DAYS OF RECEIPT OF SUCH REQUEST FROM GOVERNMENT.

B. WAIVER OF LIABILITY FOR NUCLEAR DAMAGE TO PROPERTY OF GOVERNMENT

GOVERNMENT HEREBY RELIEVES GE OF ANY LIABILITY, AND AGREES NOT TO HOLD GE'S SUPPLIERS LIABLE, FOR DAMAGE TO THE STATION, OR TO ANY OTHER PROPERTY OF GOVERNMENT, WHETHER LOCATED AT THE SITE OR ELSEWHERE, ARISING OUT OF OR IN CONNECTION WITH A NUCLEAR INCIDENT. THIS WAIVER OF LIABILITY SHALL APPLY TO ANY NUCLEAR INCIDENT ARISING OUT OF OR IN CONNECTION WITH THE STATION, OR ITS FUEL, OR ANY WORK UNDER THE STUDY, EXCEPT A NUCLEAR INCIDENT OCCURRING WITHIN THE UNITED STATES OF AMERICA.

C. GENERAL

1. GE SHALL NOT BE OBLIGATED TO PROVIDE RESULTS OF THE STUDY UNTIL GOVERNMENT HAS PROVIDED GE WITH A WRITTEN RE-AFFIRMATION BY THE PRESENT ATTORNEY GENERAL OF INDIA

OF THE OPINION OF C.K. DAPHTARY, ATTORNEY GENERAL OF INDIA, DATED DECEMBER 6, 1963 (WHICH WAS THE OPINION OBTAINED IN CONNECTION WITH GE'S CONTRACT FOR CONSTRUCTION OF THE STATION) AND THE APPLICABILITY OF THAT OPINION TO THE VALIDITY OF THE FINANCIAL PROTECTION AGAINST LIABILITY FOR A NUCLEAR INCIDENT AFFORDED GE UNDER THIS AGREEMENT. IN ADDITION, GE RETAINS THE RIGHT, AFTER RE-UNCLASSIFIED

PAGE 12 STATE 081468

CEIVING SUCH RE-AFFIRMATION AND PRIOR TO PROVIDING RESULTS OF THE STUDY, TO OBTAIN FROM INDEPENDENT INDIAN COUNSEL OPINIONS AND RE-AFFIRMATION OF PREVIOUSLY OBTAINED LEGAL OPINIONS RESPECTING SUCH FINANCIAL PROTECTION AND SUCH ATTORNEY GENERAL'S OPINION.

2. IT IS THE INTENT OF THE GOVERNMENT TO UTILIZE THE FULL EXTENT OF ITS AUTHORITY UNDER ALL PROVISIONS OF LAW TO MAKE THIS ARTICLE A FULLY EFFECTIVE AND BINDING OBLIGATION OF THE GOVERNMENT IN ACCORDANCE WITH ITS TERMS.

3. THIS ARTICLE SHALL NOT BE CONSTRUED AS CREATING ANY OBLIGATIONS ENFORCEABLE AGAINST GE BY GE'S SUPPLIERS. THIS ARTICLE IS INTENDED TO CREATE OBLIGATIONS ENFORCEABLE DIRECTLY AGAINST GOVERNMENT BY GE'S SUPPLIERS.

ARTICLE II - GENERAL LIMITATIONS OF LIABILITY

A. THE TOTAL LIABILITY OF GE AND ITS SUPPLIERS WITH RESPECT TO WORK UNDER THE STUDY FOR ALL CLAIMS BY GOVERNMENT OF ANY KIND, INCLUDING NEGLIGENCE, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING

FROM THE PERFORMANCE OR BREACH THEREOF, SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE TOTAL SUM RECEIVED BY GE FOR SUCH WORK. SUCH LIMITATION SHALL NOT APPLY TO THE PROVISIONS STATED BY ARTICLE 1 (PROTECTION AGAINST NUCLEAR RISKS).

B. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, ALLEGED NEGLIGENCE OR OTHERWISE, SHALL GE OR ITS SUPPLIERS BE LIABLE TO GOVERNMENT FOR DAMAGES FOR LOSS OF ANTICIPATED PROFITS, LOSS OF USE OF REVENUES, LOSSES BY REASON OF PLANT SHUTDOWN, COST OF PURCHASED OR REPLACEMENT POWER, COST OF CAPITAL, CLAIMS OF CUSTOMERS, OR ANY OTHER SPECIAL, INCIDENTAL, OR CONSEQUENTIAL UNCLASSIFIED

PAGE 13 STATE 081468

DAMAGES OF ANY NATURE.

C. NEITHER GE NOR ANY OF ITS SUPPLIERS MAKES ANY WARRANTY

OR REPRESENTATION WITH RESPECT TO THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION FURNISHED PURSUANT TO THE STUDY OR THAT THE USE OF ANY SUCH INFORMATION MAY NOT INFRINGE PRIVATELY OWNED RIGHTS. NO WARRANTIES OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED (INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY) SHALL APPLY TO GE'S OR ITS SUPPLIERS' WORK UNDER THE STUDY.

ARTICLE III - GENERAL CONDITIONS

THE PROVISIONS OF THIS AGREEMENT (A) SHALL BE INDEPENDENT OF AND NOT LIMITED BY ANY OTHER AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO ANY WORK UNDER THIS STUDY (EXCEPT AN AGREEMENT SPECIFICALLY DESIGNATED AS AN AMENDMENT OF THIS PARTICULAR AGREEMENT), (9) SHALL BE UNLIMITED IN DURATION AND UNAFFECTED BY THE COMPLETION, EXPIRATION, OR TERMINATION OF THE STUDY, OR OF ANY OTHER SUCH AGREEMENT, OR OF ANY WORK THEREUNDER, OR BY THE TRANSFER OF THE STATION OR ITS NUCLEAR FUEL AND (C) SHALL APPLY REGARDLESS OF FAULT (OF WHATEVER DEGREE) ON THE PART OF GE OR GE'S SUPPLIERS, PROVIDED, HOWEVER, THAT IF A NUCLEAR INCIDENT RESULTS FROM AN ACT OR OMISSION DONE WITH INTENT TO CAUSE DAMAGE NOTHING CONTAINED HEREIN SHALL AFFECT GOVERNMENT'S RIGHT OF RECOURSE AGAINST THE INDIVIDUAL WHO HAS ACTED OR OMITTED TO ACT WITH SUCH INTENT OR ANY OTHER RIGHT AGAINST SUCH INDIVIDUAL.

ARTICLE IV - DEFINITIONS

AS USED IN THIS AGREEMENT:

A. "LIABILITY SHALL MEAN ANY LEGAL LIABILITY, RE-
UNCLASSIFIED

PAGE 14 STATE 081468

REGARDLESS OF THE JURISDICTION (WITHIN OR OUTSIDE THE TERRITORY OF INDIA) WHERE IT ARISES OR IS IMPOSED, OR WHERE THE CLAIM ARISES OR IS MADE, AND SHALL INCLUDE AMOUNTS PAID (WITH THE PRIOR CONSENT OF GOVERNMENT) IN SETTLEMENT OF CLAIMS OR LITIGATION.

B. "RELATED EXPENSES" SHALL INCLUDE ANY COST, CHARGE OR EXPENSE INCIDENTAL TO CLAIM HANDLING, INVESTIGATION, LITIGATION, OR SETTLEMENT (INCLUDING FEES OF COUNSEL).

C. "NUCLEAR INCIDENT" SHALL MEAN ANY OCCURRENCE CAUSING DAMAGE PROVIDED THAT SUCH OCCURRENCE OR ANY OF THE DAMAGE CAUSED ARISES OUT OF OR RESULTS FROM THE RADIOACTIVE, TOXIC, EXPLOSIVE, OR HAZARDOUS PROPERTIES OF SOURCE, SPECIAL NUCLEAR, OR BY-PRODUCT MATERIAL. "SOURCE, SPECIAL NUCLEAR OR BY-PRODUCT MATERIAL" SHALL HAVE THE MEANING DEFINED IN THE UNITED STATES ATOMIC

ENERGY ACT OF 1954, AS AMENDED.

D. "DAMAGE" SHALL INCLUDE (IN THE CASE OF INDIVIDUALS) INJURY, DISABILITY, SICKNESS, DISEASE, OR DEATH AND (IN THE CASE OF PROPERTY) LOSS OF, DAMAGE TO, OR LOSS OF USE OF SUCH PROPERTY.

E. "INDIVIDUAL, SHALL MEAN AN INDIVIDUAL PHYSICAL PERSON, AND SHALL NOT INCLUDE THE EMPLOYER OF THE INDIVIDUAL.

F. "STATION" SHALL MEAN THE TARAPUR ATOMIC POWER STATION AS REFERRED TO IN THE PREAMBLE.

G. "SITE, SHALL MEAN THE LOCATION OF THE STATION ON THE WEST COAST OF INDIA IN THANA DISTRICT OF MAHARASHTRA STATE, ABOUT 2 1/2 MILES FROM TARAPUR.

H. "SUPPLIERS" SHALL MEAN ALL VENDORS, SUBCONTRACTORS AND OTHER PERSONS, REGARDLESS OF TIER, WHO FURNISH WORK UNCLASSIFIED

PAGE 15 STATE 081468

OR SERVICES TO GE IN CONNECTION WITH THE STUDY.

I. "STUDY" SHALL MEAN THE FEASIBILITY TUDY FOR INCREASING THE SPENT FUEL STORAGE CAPWCITY OX THE STATION WHICH IS TO BE PERFORMED BY GE UNDER A SEPARATE AGREEMENT WITH THE UNITED STATES ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION AS REFERRED TO IN THE PREAMBLE.

IN WITNESS HEREOF, EACH OF THE PARTIES HERETO HAS CAUSED THIS AGREEMENT TO BE EXECUTED IN DUPLICATE BY ITS DULY AUTHORIZED OFFICERS OR REPRESENTATIVES.

INDIA

BY

TITLE

WITNESS

DATE

GENERAL ELECTRIC COMPANY

BY

TITLE

WITNESS

DATE

END TEXT OF AGREEMENT.

2. CONGEN IS REQUESTED PREPARE FOREGOING IN AT LEAST FOUR (4) COPIES FOR REVIEW AND SIGNATURE BY APPROPRIATE GOI OFFICIAL(S). AFTER SIGNATURE, WHICH WE HOPE CAN BE ACCOMPLISHED WITHOUT DELAY, CONGEN SHOULD ARRANGE FOR RETURN OF ALL FOUR (4) COPIES TO DEPARTMENT BY FASTEST AVAILABLE MEANS. WE WILL THEN ARRANGE FOR EXECUTION BY APPROPRIATE ERDA AND G.E. OFFICIALS AND RETURN TWO (2)

COPIES FOR GOI RECORDS. (IF GOI REQUIRES MORE THAN TWO
(2) SIGNATURE COPIES OF THE AGREEMENT, CONGEN
SHOULD PREPARE THEM AND SO ADVISE DEPARTMENT WHEN RE-
TURNING SAID COPIES FOR EXECUTION BY ERDA AND GE.)

UNCLASSIFIED

PAGE 16 STATE 081468

3. ALTERNATIVELY TO SAVE TIME WE CAN HANDLE THE DOCU-
MENTATION THROUGH THE INDIA SUPPLY MISSION HERE IN
WASHINGTON IF THIS AGREEABLE TO INDIAN AEC. DIXIT,
SUPPLY MISSION CHIEF, SAYS IT CAN BE HANDLED THIS WAY IF
INDIAN AEC CONCURS.

4. PLEASE ADVISE.
VANCE

UNCLASSIFIED

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 22-Sep-1999 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STORAGE, AGREEMENTS, NUCLEAR FUELS
Control Number: n/a
Copy: SINGLE
Sent Date: 12-Apr-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE081468
Document Source: ADS
Document Unique ID: 00
Drafter: OES/NET/IM: D H COOPER:BJB
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Expiration:
Film Number: D770127-0143
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t197704103/baaaevri.tel
Line Count: 615
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Message ID: 66253e9c-c288-dd11-92da-001cc4696bcc
Office: ORIGIN OES
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 12
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: BOMBAY 816
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 10-Feb-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2668590
Secure: OPEN
Status: NATIVE
Subject: TARAPUR FUEL STORAGE
TAGS: TECH, ENRG, PARM, IN
To: BOMBAY INFO NEW DELHI
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/66253e9c-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009